

# **EXHIBIT A**

Neal Cohen, et al.

V.

Jaffe, Raitt, Heuer & Weiss, P.C. et al.

Expert Witness Report

Of

Gerald J. Wernette, CPA, CEBS, AIFA®, C(k)P™

January 9, 2017

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## **1. Overview and Analysis**

Plaintiffs Neal Cohen (“Mr. Cohen”) and Darren Chaffee (“Mr. Chaffee”) have on April 25, 2016 filed a lawsuit in United States District Court for the Eastern District of Michigan against Defendant Jaffe, Raitt, Heuer & Weiss, P.C. (“Jaffe”), where Plaintiffs allege certain wrongful conduct, including legal malpractice and breach of conduct. Defendants Jeffrey M. Weiss, Lee B. Kellert and Deborah L. Baughman and Jaffe and collectively referred to as “Defendants”.

Mr. Cohen and Mr. Chaffee are in the business of acquiring underperforming businesses from large multinational corporations. Being in this business it can be inferred that they are sophisticated investors who understand the risks they bear and this was certainly the case when in January of 2013 Mr. Cohen and Mr. Chaffee began negotiations for the acquisition of LSI Corporation of America, Inc. (“LSI”). This acquisition was coordinated through plaintiff SSL Assets, LLC (“SSL”), a Delaware limited liability company whose members, through their respective holding companies are, Mr. Cohen and Mr. Chaffee. Mr. Cohen, Mr. Chaffee and SSL and collectively referred to as “Plaintiffs”.

LSI sponsored a multi-employer defined benefit pension plan for its union employees (“Pension Plan”) and that Pension Plan was under funded. Mr. Cohen and Mr. Chaffee were aware that when they consummated the acquisition of LSI that the liability of the underfunded Pension Plan would come with the acquisition of LSI and that the future success of LSI would require the ultimate payment of the funding owed to the Pension Plan.

Mr. Cohen and Mr. Chaffee were aware of the financial risks they were undertaking with the operation of LSI and by late 2014 began to support LSI’s financial underperformance and liquidity issues with personal loans and guarantees that resulted in \$4,949,800 of capital being infused into LSI between September 2014 and June 2015. Irrespective of the financial commitments to the Pension Plan, Mr. Cohen and Mr. Chaffee knew they were taking on great financial risks by making this capital infusion and that if LSI failed all this capital would be lost. They also were aware that if LSI continued to perform poorly that the Pension Plan and payment of those obligations would take precedence before any of the capital infused into LSI could ultimately be returned to them and Mr. Cohen and Mr. Chaffee could then earn a profit on this investment.

The lawsuit filed on April 25, 2016 is seeking damages related to the \$4,949,800 of invested funds used for LSI lending and an additional approximately \$350,000 in LSI non-loan costs. Based on Rehmann’s analysis it is clear that these funds were invested in LSI based on Mr. Cohen’s and Mr. Chaffee’s faith as investors that they could turn LSI into a profitable entity that would in turn provide of a return on their investment. They were aware of the risks that, irrespective of the unfunded Pension Plan obligations, they would be putting capital at risk through further investments in LSI.

## **2. Scope and Qualifications**

Counsel for the Defendants engaged Gerald Wernette of Rehmann Financial (“Rehmann”) to provide perspective on alleged economic damages suffered by Plaintiffs as a result of the alleged actions.

Gerald Wernette is a CPA, Certified Employee Benefit Specialist, Accredited Investment Fiduciary Analyst and Certified 401(k) Professional and is the Director of Retirement Plan Consulting Services for Rehmann Financial. Rehmann Financial is part of the largest regional accounting, tax, consulting, wealth management and corporate investigative services firms in the country. Gerald Wernette has

more than 33 years of experience working with retirement plans at both the employer and participant levels. His experiences range from one-person plans to those covering more than 15,000 participants and both defined benefit and defined contribution plans. Mr. Wernette has extensive experience in areas of plan administration, design, fiduciary oversight and investment advisory services.

### **3. Conclusion**

In our performance of this analysis, Rehmann reviewed documentation related to this case and performed our own analysis of the facts and circumstances.

It is our conclusion that the claim by the Plaintiffs should not reflect on any losses related to capital contributed by the Plaintiffs for LSI Lending or LSI Non-Loan Costs as those investments were made independent of the obligations related to the underfunded Pension Plan. It was the intention of the Plaintiffs to invest in LSI as an ongoing entity and that is the business the investors, Mr. Cohen and Mr. Chaffee are in, and with that comes the risk of loss of the business they are investing in fails. They would not be sharing their gains with any outside parties if LSI succeeded in producing profits so it does not make sense to have any losses connected to their investment in LSI's ongoing business operations to be part of the claim in this litigation. To this end it also does not make sense that the Plaintiffs would be seeking a return on their claim using treasury bill rates or the return of the S&P 500 index being that this is a speculative investment and one which they went into it with no guaranteed return nor an indication that may realize a return of any projected value so to use these values for interest on the claim seems very unreasonable.

Rehmann's analysis is based on information received as of the date of this report. Therefore, Rehmann reserves the right to modify its analysis and opinions based on any subsequent information.

Rehmann



**Gerald J. Wernette, CPA, CEBS, AIFA, C(k)P**  
**Principal/Director**  
**Rehmann Retirement Builders**

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## AREAS OF SERVICE

- Retirement plan consulting, design and administration
- Retirement plan fiduciary consulting
- Retirement plan participant education and communication
- Retirement plan investment advisory services
- Cafeteria plan design

## CURRENT POSITION

Gerald directs the consulting services area for Rehmann Retirement Builders and is based in our Farmington Hills office.

## EXPERIENCE

Since 1984, Gerald has provided retirement plan strategies to industries ranging from professional services to manufacturing, and from one-person firms to organizations with over 15,000 employees. His scope of services has taken him from plan design through annual administration to the plan termination process. Gerald combines his strong technical skills with a solid set of communication skills to deliver the high level of service needed in today's business environment. In 2010, Gerald was voted by the DCP Institute as one of 300 Most Influential Advisors in the Defined Contribution Market. In 2011, Gerald was voted by "The 401k Wire" as one of the 60 Most Influential Advisors in the Defined Contribution Market. He has been quoted extensively in the news media, including "Financial Advisor Magazine," "US News & World Report" and "Investment News."

## EDUCATION

Gerald is a graduate of Central Michigan University with a Bachelor of Science in accounting. He holds an accident, health and life insurance license and is an investment advisor representative.

## PROFESSIONAL ORGANIZATIONS

- American Institute of Certified Public Accountants
- International Society of Certified Employee Benefit Specialists, former chairman of Detroit area chapter
- Michigan Association of Certified Public Accountants, former chairman of employee benefits committee
- Center for Fiduciary Studies
- 401(k) Coach Program
- Founding lecturer for The Retirement Advisor University, UCLA Anderson School of Management Executive Education
- American Society of Pension Professionals & Actuaries
- National Association of Plan Advisors, government affairs committee
- Member of Thomson Reuters Expert Witness Services

Advisory services offered through Rehmann Financial, a Registered Investment Advisor. Fixed and/or Traditional Insurance Services offered through Rehmann Insurance Group. Rehmann Insurance Group is not affiliated with Royal Alliance Associates, Inc or registered as a broker-dealer or investment advisor.



## **Publications and Contributions (Previous 5 years)**

- *Your 401(k) Plan – How to Get the Most Out of it and Avoid Losing in the Process* – Presentation for ISCEBS – June 17, 2016
- *Plan Sponsors: Get Ready for Fiduciary Rule* – White Paper – June 15, 2016
- *MEPs Can Transform Retirement industry* – Financial Advisor Magazine – June 1, 2016
- *Planning Ahead* – Financial Advisor Magazine – May 2, 2016
- 2016 PLANADVISER Top 100 Retirement Plan Adviser List – Names to is on February 24, 2106
- *Multiple Employer Plans: A Good Fit for the Franchising Industry* – Franchising World Magazine – January 2016
- *Happy Employees = Successful Business: 4 Strategies to Implement Today* – White Paper – July 2015
- Member of National Association of Plan Advisor's Government Affairs Committee last 4 years.
- *What Plan Sponsors Need to Learn* – plansponsor.com – May 9, 2014
- *Know Your Responsibilities* – Leading Edge Magazine – Winter 2014
- *How to Fail at Retirement* – bankrate.com – February 23, 2014
- *Compliance headaches coming for 401(k) Plan Sponsors due to new Fiduciary regulations in 2014* – fiduciarynews.com – January 7, 2014
- *401(k) Fee Disclosure still misunderstood, ignored by workers* – Investment News – December 12, 2013
- *Auto-Escalations future looks bright* – Employee Benefits Adviser – October 29, 2013
- *The online 401(k) team chronicles America's retirement problem so we can fix it* – Employee Benefits Adviser – July 2013
- *Fiduciary Matters* – Financial Adviser – May 2013
- *TRAU to launch Plan Sponsor University* – advisorone.com – April 8, 2013
- Founding lecturer with The Retirement Adviser University UCLA Anderson School of Management Executive Education – July 2010
- *What the DOL Has in Store* – PlanSponsor Magazine – February 26, 2013
- *Retirement Plan Expert Speaks to Saving Challenges* – Employee Benefit News – March 23, 2012
- *Updated Stable-Value Funds Making a Com Back* – Investment News – March 4, 2012
- *10 Important Ages for Retirement Planning* – US News & World Report – February 21, 2012
- *Advisers Steering Clear of Turbocharged Funds* – Investment News – December 8, 2011
- *Lifting the lid on 401(k) Fees* – CFO Magazine – December 2011
- *Rescuing Retirement – Human Resources Magazine* – December 2011
- *ERISA expert to plan advisers: Don't shy from offering affiliated funds from service providers* – Investment News – August 31, 2011
- *We Need to Spoon Feed Participants* – Employee Benefit News – August 2011

## **Documents Considered:**

1. Complaint – (2016-04-25)
2. Answer to Complaint, Affirmative Defenses, Reliance Upon Jury Demand (court stamped) (2016-06-17)
3. 2013 LSI financial statements
4. 2013 LSI Pension Withdrawal Liability (Table 3 in excel)
5. 2013 LSI tax return
6. 2013 LSI Pension withdrawal liability report
7. 2014 LSI financial statements
8. 2014 LSI tax return
9. 2015 Form 5500 Carpenters Labor-Management Pension Plan
10. 2015 LSI tax return
11. Acknowledgement & Agreement Loan Sale - Bell State and Cocha Finance (2015-10-20)
12. Agreement Regarding Member Loans (NC and DC) (2015-10-20)
13. Alliance Management email to Chaffee and Cohen (2016-07-20)
14. Alliance Management invoice 1- \$10,000 (2015-12-23)
15. Alliance Management invoice 2 - \$20,000 (2015-12-31)
16. Alliance Management invoice 3 - \$33,848.50 (2016-01-10)
17. Alliance Management invoice 4- \$25,000 (2016-01-12)
18. Alliance Management Wire Confirmation to Chaffee and Cohen (2016-07-20)
19. Approved Budget 4 (2016-02-05).
20. Bates numbers for Econlit
21. Bell State Bank & Trust Assignment of Deposit Account (2014-09-13)
22. Cocha Finance LLC Loan Summary
23. Expenses - Darren Chaffee (2015-07-30)
24. Expenses - Darren Chaffee (2015-09-25)
25. Expenses - Darren Chaffee (2015-11-19)
26. Expenses - Darren Chaffee (2015-12-14)
27. Expert Report of Dwight Duncan of EconLit (2016-12-09)
28. Expert Report of Timothy Geddes of Deloitte (2016-12-09)
29. FedEx Receipt \$30 (2015-12-23)
30. Incoming Wire Transfer from LSI for Neal Cohen - \$31,555.11 (2016-07-20)
31. Incoming Wire Transfer from Messerli for Darren Chaffee – \$169,339.47 (2016-05-18)
32. Incoming Wire Transfer from Messerli for Neal Cohen - \$169,339.48 (2016-05-18)
33. Invoice Summary
34. Jaffe invoice 351165 \$73,243.45 (2013-06-26)
35. Jaffe invoice 365357 \$1,316 (2014-06-05)
36. Jaffee Invoice 367148 \$688 (2014-07-21)
37. Jaffee Invoice Detail file
38. Jaffee Invoice Outstanding Summary (2015-03-13)
39. Jeffrey M. Weiss Letter (2015-12-18)
40. John A Knutson Invoice 129858 \$936 (2016-06-28) & payment
41. John A Knutson payment \$2,500 (2016-03-04)
42. Loan agreement 1 - Darren Chaffee and Cocha Finance \$549,900 (2014-09-30)
43. Loan agreement 2 - Neal Cohen and Cocha Finance \$849,900 (2014-09-30)
44. Loan agreement 3 - Darren Chaffee and Cocha Finance \$200,000 (2015-02-03)

45. Loan agreement 4 - Neal Cohen and Cocha Finance \$100,000 (2015-02-10)
46. Loan agreement 5 - Neal Cohen and Cocha Finance \$525,000 (2015-02-23)
47. Loan agreement 6 - Darren Chaffee and Cocha Finance \$725,000 (2015-03-31)
48. Loan agreement 7 - Neal Cohen and Cocha Finance \$1,000,000 (2015-05-19)
49. Loan agreement 8 - Darren Chaffee and Cocha Finance \$1,000,000 (2014-06-22)
50. Loan Purchase Agreement - Bell State and Cocha Finance (2015-10-13)
51. Loan Reaffirmation Agreement (LSI - NC - DC) dated (2015-10-20) (fully executed)
52. LSI 2016 Weekly Cash Flow Report
53. LSI acquisition closing binder (2013-06-18)
54. LSI Forecast 2015
55. Messerli Invoice 319197 \$1,280 (2016-01-20)
56. Messerli Invoice 319966 \$17,756.49 (2016-02-08)
57. Messerli Invoice 321017 \$7,346.98 (2016-03-10)
58. Messerli Invoice 321879 \$9,558.18 (2016-04-08)
59. Messerli Invoice 322947 \$2,888.50 (2016-05-06)
60. Messerli Invoice 324405 \$2,719 (2016-06-14)
61. Messerli Invoice 325107 \$637.58 (2016-07-08)
62. Messerli Invoice 327260 \$1,419.94 (2016-09-09)
63. Messerli Payment \$4,793.30 (2016-10-25)
64. Messerli Retainer \$5,000 Wire (2015-12-23)
65. Order for Appointment of a Receiver (2016-01-15)
66. Over-advance to LSI \$90,088.80
67. Plaintiff\_s Supplemental Answers to 1st Set of Interrogatories and Responses to Request
68. Plaintiffs' Answers to Defendants' First Set of Interrogatories and Responses to Request For Production of Documents
69. Post Discharge Report (2016-07-20)
70. Promissory Note - LSI and Darren Chaffee \$522,621.72 (2015-10-20)
71. Promissory Note - LSI and Neal Cohen \$522,621.72 (2015-10-20)
72. Reconciliation of Payments
73. Stinson Invoice 30118152 \$11,972 (2015-08-17)
74. Stinson Invoice 30118245 \$1,150 (2015-08-17)
75. Stinson Invoice 30124949 \$15,547.50 (2015-09-23)
76. Stinson Invoice 30124951 \$5,895.50 (2015-09-23)
77. Stinson Invoice 30131545 \$6,697.36 (2015-10-26)
78. Stinson Invoice 30131547 \$1,181.14 (2015-10-26)
79. Stinson Invoice 30131548 \$31,586 (2015-10-26)
80. Stinson Invoice 30134920 \$3,205 (2015-11-09)
81. Stinson Invoice 30134922 \$5,022 (2015-11-09)
82. Stinson Invoice 30134935 \$20,956 (2015-11-09)
83. Stinson Invoice 30143392 \$1,516 (2015-12-22)
84. Stinson Payment \$82,360.36 (2015-12-23)
85. Stone & Associate invoice (2015-11-12) and copy of check \$2,400 (2015-12-23)
86. Withdrawal Liability for year ending 2011-12-31
87. Withdrawal Liability for year ending 2012-12-31
88. Withdrawal Liability for year ending 2013-12-31
89. <https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15>
90. <https://us.spindices.com/indices/equity/sp-500>

Note: Although an attempt has been made to list all the documents and information that Rehmann considered, this list may need to be supplemented if it is determined that certain documents and/or information have been inadvertently omitted. Additionally, some of the documents listed above consist of filenames as they appeared on the electronic production to Rehmann. Therefore, while some documents listed above appear to be incomplete they are listed using the filenames that were provided to Rehmann.

**Compensation:**

Rehmann's billing rates range from \$125 to \$425 per hour. Rehmann's compensation is not dependent upon the substance of the opinions contained in this report.